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Testimony of the Center for Popular Democracy (CPD)
Submitted to the Committee on Labor and Public Employees, Connecticut General
Assembly
Representative Manny Sanchez and Senator Julie Kushner, Chairs
March 9, 2023
Re: House Bill No. 6859
An Act Concerning Predictable Scheduling

Dear Representative Sanchez, Senator Kushner, and members of the Labor and Public Employees Committee,

On behalf of the Center for Popular Democracy (CPD), I write in support of HB 6859, An Act Concerning Predictable Scheduling, to protect hourly workers in Connecticut's service sector.

CPD's Fair Workweek Initiative provides technical assistance to policymakers and enforcement staff on the development and enforcement of fair workweek policy, including laws in Seattle, WA; San Francisco, Los Angeles, Berkeley, Emeryville, and San Jose, CA; New York City, NY, Philadelphia, PA; Chicago, IL; and the state of Oregon. We have deep expertise in the industries where unstable work hours are most prevalent, including the business models that have generated these practices and the impact on workers and their families.

Just-in-time scheduling is the practice of publishing work schedules just days in advance and tweaking those schedules until the last minute, in an attempt to precisely calibrate staffing to match expected demand. For over 317,000 Connecticut residents who work in the retail, food service, hospitality, and nursing home care, where just-in-time scheduling is pervasive, this practice means unstable hours that make it **impossible for workers to plan their lives**.¹ In the last academic study of Connecticut retail and food service workers research found that:²

- 56% receive their schedules with less than 2 weeks' notice; 25% with less than a week's notice.
- Although employers portray work hours as flexible to meet the varying needs of parents, students, and workers with second jobs, academic survey data tells a different story:
 - Only 15% of hourly service-sector workers in Connecticut have control over

¹ U.S. Census Bureau, "Industry by Sex for the Civilian Employed Population 16 Years and Over" 2017-2021 American Community Survey 5-Year Estimates, Connecticut. March 2021
<https://data.census.gov/table?t=Employment:Industry&g=0400000US09&tid=ACST5Y2021.S2403>; US Bureau of Labor Statistics, "Employment of Nursing Assistants by State, May 2021."

² All Connecticut data is from Daniel Schneider & Kristen Harknett, *Working in the Service Sector in Connecticut*, Institute for Research on Labor and Employment at the University of California, Berkeley, March 2018. Available at <https://shift.hks.harvard.edu/working-in-the-service-sector-in-connecticut/>

their work hours. **Half of the workers surveyed have no input into their work schedules**, which are decided unilaterally by their employers.

- 66% of workers keep their schedules open and available in case their employer needs them for work.
- 74% of workers want a more predictable schedule.
- 72% of workers report that their work hours conflict with their caregiving obligations.

Companies that rely on just-in-time scheduling require managers to spread work among many part-time employees so that they can “flex up” during times of increased demand.³ This pervasive part-timing undermines families’ economic security:

- 88% of CT service workers are part-time, with 48% of employees receiving less than 30 hours a week. 17% of them work less than 20 hours.
- Among workers who typically work less than 30 hours a week, 64% want to work more hours – in other words, they are **underemployed**.
- Inadequate work hours, as well as the income volatility that accompanies large swings in work hours, keeps workers in poverty. Workers with unstable and inadequate hours are more likely to face **housing instability and hunger**.

Researchers have also documented that **children suffer when their parents work unstable hours**.⁴ Parents with last-minute schedules are much more likely to cobble together informal childcare or even leave their children unattended when the alternative is to risk termination. The children of parents facing last-minute changes to their work schedules are more likely to miss school. The stress of instability also causes psychological harm to kids, leading to a higher incidence of behavioral challenges. Moreover, these burdens do not fall equally on all workers. Due to discrimination by managers, people of color, especially **women of color, bear the brunt of schedule instability**.⁵

Widespread evidence shows that franchises are no exceptions to these practices. They operate like highly standardized chains and reap the associated benefits. Fast food franchises are the most common type of franchise, representing a quarter of all U.S. franchises.⁶ McDonald’s, the nation’s largest fast food chain, operates more than 90% of its 36,000 restaurants as franchises.⁷ In 2021, McDonald’s profits totaled \$7.5 billion.⁸ At the end of 2022, Connecticut’s own Subway reported an increase in sales of nearly 11 percent for September compared to the prior year.⁹

³ Susan Lambert (2008) “Passing the buck: Labor flexibility practices that transfer risk onto hourly workers.” *Human Relations* vol. 61(9), p. 1207.

⁴ Daniel Schneider and Kristen Harknett, *It’s About Time: How Work Schedule Instability Matters for Workers, Families, and Racial Inequality*, Institute for Research on Labor and Employment at the University of California, Berkeley, available at <https://shift.berkeley.edu/its-about-time-how-work-schedule-instability-matters-for-workers-families-and-racial-inequality/>.

⁵ *Ibid.*

⁶ Renee Bailey, “Food Franchise Report 2017,” *Franchise Direct*, July 26, 2017, <https://www.franchisedirect.com/information/foodfranchisereport2017/>.

⁷ “Franchising Overview,” *McDonald’s*, <https://corporate.mcdonalds.com/corpmcd/franchising/overview.html>.

⁸ “Franchising Overview,” *McDonald’s*, <https://corporate.mcdonalds.com/corpmcd/franchising/overview.html>.

⁹ “Subway, offering a rare glimpse at its finances, says it’s hitting record sales,” CNN.com, October 12, 2022, <https://www.cnn.com/2022/10/12/business/subway-series-menu-sales/index.html>

In exchange for access to a franchisor's brand, operational and technological systems, real estate, employee/manager training programs, and other core business tools, franchisees make payments to franchisors in the form of royalties, fees, and rental payments.¹⁰

Moreover, corporate franchisors often impose standardized policies that **control many major aspects of franchisees' daily operations, including unstable scheduling**. McDonald's Corporation's requirements heavily influence franchisees' personnel policies and practices, working conditions, labor budgets and scheduling.¹¹

Fast food franchisees have access to franchisors' **workforce management technology** to manage point-of-sale systems, payroll, and labor utilization rates, and are often required or pressured to use these technologies. McDonald's Corporation strongly incentivizes franchisees to use all the features of its workforce management technology including its system for scheduling staff, timekeeping, tracking meals and break times, and rates of pay.¹² These systems often generate the **just-in-time work schedules**¹³ that negatively impact employees' lives – but can also be programmed to ensure compliance with Fair Workweek laws. Access to these technologies therefore makes compliance far more viable for franchisees than for small businesses that lack similar tools.

Franchisors are being held legally responsible for franchisees' employment practices.

Evidence of the integrated relationship between franchisees and corporate franchisors is leading courts and enforcement agencies to recognize franchisors as **joint employers**. In 2016, McDonald's Corporation agreed to pay \$3.75 million to settle a lawsuit concerning overtime violations at various franchise locations in California.¹⁴ Following extensive investigation into wage and hour violations at Sonic Burger franchises by the U.S. Department of Labor (DOL), corporate owner Sonic Industries signed an agreement with DOL to promote compliance with labor standards at its franchise locations nationwide.¹⁵

In an ongoing enforcement action against McDonald's franchisees for violating workers' organizing rights, the General Counsel of the National Labor Relations Board determined that McDonald's Corporation could be named as a joint employer.¹⁶ Although the Trump Administration attempted to shield McDonald's from liability by settling these charges, a judge rejected the settlement because it minimized McDonald's obligations despite extensive evidence of McDonald's corporate control over franchise labor practices.¹⁷

Fair Workweek and Predictable Scheduling legislation like HB 6859 is a common-sense solution that preserves employers' flexibility and management discretion while establishing basic

¹⁰ "FAQs about Franchising," *International Franchise Association*, <https://www.franchise.org/faqs-about-franchising>.

¹¹ 2022 Franchise Disclosure Document for McDonald's, https://www.franchimp.com/index.php?page=pdf&f=107211_2022.pdf.

¹² Testimony of Pacific Management Consulting Group (a restaurant analysis consultancy) Founder John. A. Gordon., page 3, Ochoa v. McDonald's Corp. (June 19, 2015).

¹³ Sean McElwee, "The Threat of Just – in – Time Scheduling," HuffPost, Dec 6, 2017, https://www.huffingtonpost.com/sean-mcelwee/the-threat-of-justintime-b_5682481.html.

¹⁴ Daniel Wiessner, "McDonald's to pay \$3.75 million in first settlement with franchise workers," October 31, 2016, <https://www.reuters.com/article/us-mcdonalds-settlement-idUSKBN12V1NJ>.

¹⁵ Ben Penn, "Sonic Works with Labor Agency to Keep Wage Violations Off the Menu," Bloomberg BNA, July 27, 2017, <https://www.bna.com/sonic-works-labor-n73014462371/>; "U.S. Department of Labor, Sonic Sign Agreement to Promote Fair Labor Practices at Franchises Nationwide," July 27, 2017, <https://www.dol.gov/newsroom/releases/whd/whd20170727>.

¹⁶ "NLRB Office of the General Counsel Authorizes Complaints Against McDonald's Franchisees and Determines McDonald's, USA, LLC is a Joint Employer," *National Labor Relations Board*, July 29, 2014, <https://www.nlr.gov/news-outreach/news-story/nlr-office-general-counsel-authorizes-complaints-against-mcdonalds>.

¹⁷ McDonalds USA LLC, a Joint Employer, et al., 02-CA-093893 (NLRB Administrative Law Judge's Order, July 17, 2018) <http://apps.nlr.gov/link/document.aspx/09031d458288067b>.

standards that allow working families to thrive. When working people have schedules they can plan around, enough hours and income to pay their bills, a voice in when they'll work, and healthy hours with time to rest, their families and communities – as well as the state's economy – benefit.

The companies that would be covered by this Predictable Scheduling bill are already complying *and benefitting* with similar laws elsewhere. Workforce management company Deputy, which provides technology that supports compliance with these laws, reports positive impacts of fair workweek compliance for their clients:

- Fair workweek laws generally result in a 14% increase in hours for workers.
- Absences and tardiness have gone down by over 30%.
- **Covered employers in fair workweek jurisdictions have seen a 3% decrease in labor costs.**¹⁸

Despite rapid and unprecedented changes in unemployment rates and employment levels over the course of the pandemic, academic evidence shows that scheduling practices did not change significantly. All across the country just-in-time scheduling continued to take a toll on working families, with women and workers of color bearing the costs of the all-too-common practice. Workers' reported similar rate of on-call shifts, cancelled shifts, shift timing changes, and "clopening" shifts. Significant majorities surveyed continued to want more work hours and wanted more stable and predictable schedules.¹⁹

Those negative trends have, however, a few exceptions. Evidence from two-years of study of Seattle's Secure Scheduling Ordinance showed significant changes in the lives of covered workers. It increased the share of workers knowing their schedules two weeks in advance, decreased the share reporting last minute shift changes without pay, increased worker satisfaction with their job, increased workers' overall happiness and sleep quality, and reduced their material hardship.²⁰

For those companies that already practice advance scheduling with worker input, bills like these do not represent any inconvenience. They already lead on high-road employment practices that improve retention and productivity. With access to technology that allows for easy compliance, this bill ensures their good practices become the standard across the state and keep bad actors from hurting more of our communities.

As a national network of community organizations, we hear from our affiliates' members the impact that Fair Workweek legislation has had on their lives as they have been able to study, take care of their children, work second jobs, and be protected from some forms of arbitrary retaliation.

Indeed, workers who have been exercising their right to organizing and unionize at Starbucks have faced increasingly unexpected changes in their schedules in the past year. HB 6859 would go a long way to protect such workers.

¹⁸ Communication from Krista Hardwick, legal counsel, Deputy, Jan. 28, 2020.

¹⁹ Elaine Zundl, Daniel Schneider, Kristen Harknett, and Evelyn Bellew. *Still Unstable: The Persistence of Schedule Uncertainty During the Pandemic*, Shift Project Research Brief. <https://shift.hks.harvard.edu/still-unstable>

²⁰ Daniel Schneider, Kristen Harknett, and Veronique Irwin. *Seattle's Secure Scheduling Ordinance: Year 2 Worker Impact Report*, Shift Project Research Brief. <https://shift.hks.harvard.edu/seattles-secure-scheduling-ordinance-year-2-worker-impact-report/>

Connecticut's national leadership on the minimum wage, earned sick leave, and paid family leave shows a commitment to building an economy where workers and their families can thrive. For hourly workers with unstable schedules, that vision will only be realized when this Legislature enacts a Fair Workweek through Predictable Scheduling.

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